

**HIGH COURT OF UTTARANCHAL AT NAINITAL**  
(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b))

Description of the case.

Civil Revision No. 341 of 2001  
(Old No. 334/1997)

Sanjay Kumar Gulati

Vs.

- 1- N.P. Singh
- 2- Smt. Manjeet Kaur

Approved for reporting.

---

Not approved for reporting

Date of decision 29.7.2004

Initial of Judge

**IN THE HIGH COURT OF UTTARANCHAL**  
**AT NAINITAL**

**RESERVED**

**Civil Revision No.341 of 2001**  
(Old No. 334 of 1997)

Sanjay Kumar Gulati

.....Revisionist

Vs.

1. N.P. Singh
2. Smt. Manjeet Kaur

.....Respondents

**Date of delivery of Judgment : 29.7.2004**

**Hon'ble Rajesh Tandon, J.**

Heard Sri V.K. Bist counsel for the revisionist & Sri Ranjeet Saxena counsel for the respondent no.1.

By the present revision the revisionist has challenged the judgment and order dated 29.9.1997 passed by the judge Small Cause Court, Dehradun.

Brief facts giving rise to the present revision are that suit bearing no. 01/1994 was filed by the plaintiffs- N.P. Singh and other for eviction of the premises situated beyond municipal limits of Dehradun. According to the plaintiffs, the rate of rent was settled @ Rs. 1600/- per month after mutual agreement but the receipt of the same was obtained by the defendant @ Rs. 800/- per month by playing fraud and mis-representation. Having done so by the defendant, the plaintiffs accepted the said rate to avoid further controversy.

The plaintiffs have submitted that the said building was constructed in the year 1988 and the same was not assessed by the Municipal Board, Dehradun and it is beyond the Municipal limits of Dehradun and further the building is not covered under U.P. Act No. 13 of 1972. The plaintiffs have submitted that the building in dispute is exempted from the operation of the U.P. Act No. 13 of 1972.

For the purpose of recovery of rent, a notice was sent on 21.1.1994 to the defendant. In spite of notice, the defendant neither paid the rent of the premises nor vacated the premises, therefore, the present suit was filed.

The trial court has framed the following issues:-

1. क्या विवादित भवन का निर्माण वर्ष 1989 में हुआ है तथा इस कारण से इस भवन पर यू पी एक्ट 13-72 लागू नहीं होता.
2. क्या विवादित भवन नगरपालिका देहरादून सीमा को परिधि से 3 किलो मीटर के अन्दर स्थित है यदि हां तो इसका प्रभाव
3. क्या प्रतिवादी को और वादीगण का किराया दिनांक 1.7.92 से भो 1 है और इसे अदा करने में प्रतिवादी दो पी रहा है यदि हां तो इसका प्रभाव
4. क्या वादी ने प्रतिवादी पर नोटिस दिनांक 31.1.94 को सम्यक रूप से तामील की है
5. क्या यह वाद मूलवाद संख्या 8/94 के निस्तारण होने तक धारा 10 व 151 सी. पी. सी. के अर्न्तगत स्थगित रहने योग्य है
6. वादी किसी अन्य अनुतो 1 को पाने का अधिकारी है

While deciding issue Nos.1 & 2, the trial court has recorded a finding that the provisions of U.P. Act 13/1972 are not applicable to the premises in dispute as the premises was constructed after 1984. So far as the issue no.3 is concerned, the trial court has concluded that the defendant has failed to pay the rent of the premises and he was a defaulter. While deciding issue no. 4, the trial court has recorded that the notice was valid. With regard to the issue no.6, the finding of trial court was recorded in favour of the plaintiff.

On behalf of the plaintiff-Narendra Pal Singh, he was examined as PW-1 and Satish Chandra Raturi (PW-2). The plaintiffs have filed the copies of the documents i.e. sale deed (Ex.1), Map (Ex.2), Agreement to pay debt (Ex.3), Notice (Ex.4), receipt of the registry (Ex.5) and unserved notice (Ex.6). On the contrary, the defendant has filed the copies of the documents, namely form (Ex.kh.1-2), affidavit (Ex. Kh.3), Receipt (Ex.Kh.4 & 5) and bill (Ex.Kh. 6 -9) etc in order to prove his case. He has also examined on D.W.1

I have examined the entire evidence on record and perused the statements of both the parties.

On a perusal of Ex.1, it is revealed that the premise was purchased by the landlord on 12.1.1984 plaintiff has placed reliance on the sale deed where it has been shown that it was an open land and liberty was given to the landlord to raise the constructions according to his sweet will. The landlord-respondent got the map sanctioned on 27.9.1989. Ex.3 is the loan agreement which was executed on 4.9.1989 for the constructions of the premises. The landlord has also filed the receipts of the instalments which were given from time to time in pursuance of the loan granted in his favour. The record further shows that after the loan was taken by the landlord the map was pledged with HDFC.

The plaintiff was examined himself as PW-1. A loan application form was issued on 15.5.1981 in favour of Sri N.P. Singh by the HDFC for the purchase of the land, a certificate issued regarding constructions i.e. built up area and the rate of interest as the loan amount shown to the extent of Rs. 14.00. The plaintiff was examined himself as PW-1. He deposed that he has purchased the property in the year 1984 and he got the map sanctioned in the year 1988. The original map was pledged with the HDFC and the house was constructed in the year 1991.

Sri Sanjay Kumar Gulati (DW-1) has stated that the building was constructed in the year 1983-84. The aforesaid statement has been disbelieved by the Judge Small Court on the ground that the landlord has himself purchased the property in the year 1984 and as such there is no question of having raised the constructions in the year 1983. On the basis of the evidence on record, the Judge Small Cause Court has recorded a finding that since the construction in dispute was made after 1984 therefore the premises is not covered under the U.P. Act No. 13, 1972, Admittedly, the suit was filed in the year 1994 and the constructions being not covered under U.P. Act No. 13, 1972 therefore the Judge Small Court has rightly come to the conclusion that the defendant is not entitled for the benefit of the provisions of the said Act.

For the sake of convenience, the Explanation 1 to sub-section 2 of the U.P. Act No.13, 1972 is quoted below:-

*“(2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 24, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29,*

*nothing in this Act shall apply to a building during a period of ten years from the date on which its constructions is completed.*

*Explanation (I) - For the purposes of this section,-*

*(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:*

*Provided that there may be different dates of completion*

*Of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenant;*

*(b) “Construction”, includes any new construction in place of an existing building which has been wholly or substantially demolished;*

*(c) Where such substantially additional is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition.*

As will appear from the aforesaid explanation (1) that Act No. 13, 1972 creates an artificial fiction and contains a deeming clause by virtue of clause (a) of Explanation (1). One of the factors being the actual date of occupation, the construction shall be deemed to have been completed on the said date. The deeming clause has been interpreted in **ARC 1993 (2)**

**between Raj Kumar Sharma Vs. District Judge, Haridwar**, the same is quoted below:-

*“As will be noticed from the above, for the purposes of Section 2(2) of the Act the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the Local Authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect and where the said dates are different, earliest of the said dates. The word “deemed” is normally used to create a statutory fiction. While interpreting a provision creating a legal fiction is created and it is only after ascertaining this all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction have to be assumed. As clearly pointed out by the Apex Court in its decision in the case of Commissioner of Income Tax, Delhi Vs. S. Teja Singh, reported in AIR 1959 SC 352, it is well settled that in construing the scope of legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The Hon’ble Supreme Court in that case quoted with approval the observation of Lord Asquith in East End Dwellings Co. Ltd. Vs. Finsburg Borough Council, 1952 AC 109, which are to the following effect:-*

*“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so also imagine as real the consequences and incident which if the putative state of affairs had in fact existed must inevitably have flowed from or accompanied it ..... The statute says that you must imagine a certain state of affairs; it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”*

*As will appear from the aforesaid explanation that the building having*  
Having been purchased in the year 1984, the plan was thereafter sanctioned in the year 1989, the defendant-applicant having occupied the premises in the year 1991 therefore for all the purpose the construction of the building shall be deemed to have been completed on the date when it was actually occupied by the defendant.

The date of completion of construction as has been interpreted in **Hanumant Lal Tripathi Vs. Addl. District Judge and another reported in 2003 (1) Allahabad Rent Cases page 395**, the observations are quoted below:-

*“16. It is thus, evident that the date of completion of the construction of a building is to be determined on the basis of the aforesaid deeming provision. Such determination is to be done on the basis of report/record, or assessment as mentioned in the said provision, or the earliest of such dates if the dates are different. However, in case, there is no such report or record or assessment, then the date of actual occupation of the building for the first time will be deemed to be the date of completion of construction of such building.*

*17. Thus, one of the dates mentioned in the aforesaid provision is the date of first assessment of the building in question. In the present case, the learned Judge Small Cause Court has recorded a finding that the first assessment of the disputed accommodation took place on 1.4.1986. Thus, the evidence with regard to the first assessment of the disputed accommodation is available on the record of the case.”*

Explanation creates the statutory fiction so far as the construction of the building is concerned, the defendant was unable to satisfy that the building was in existence before 1984. In view of the aforesaid facts and circumstances, I find no illegality in the order passed by the Judges Small Court so as to interfere under Section 25 of the Small Courts Act.

The Apex Court in *Atma Ram Mittal Vs. Sardar Singh Punia* AIR 1988 SC 2031 *Ramesh Chandra Vs. IInd Additional District Judge and others* 1992 (1) SCC. 751 and in *Bhola Nath Vs. Mulak Raj Madan* 1994

(2) SCC 127 it has been held that the suit filed during the pendency of the period when the exemption clause was applicable, will not affect the applicability of U.P. Act No. 13 of 1972.

In view of the above, the revision is dismissed. No order as to costs. However the defendant –applicant is allowed time upto 31<sup>st</sup> May, 2005 to vacate the premises on the following conditions:-

- a) the revisionist-applicant shall furnish the undertaking in the court below by 30<sup>th</sup> August, 2004 for vacating the premises by 30<sup>th</sup> of May, 2005.
- b) the entire arrears of rent shall be deposited by 30 August, 2004.
- c) The monthly amount due against him for use and occupation shall be paid regularly by 7<sup>th</sup> of each month.
- d) In case of any default of aforesaid conditions, the plaintiff will be entitled to recover the possession forthwith.

**(Hon'ble Rajesh Tandon, J.)**